



State of Washington  
DRAFT  
REPORT OF EXAMINATION  
FOR WATER RIGHT CHANGE



File NR CS3-\*01530C  
WR Doc ID 4688025

**CHANGE DENIED – WATER RIGHT RELINQUISHED**

<b>PRIORITY DATE</b> October 26, 1925	<b>WATER CERTIFICATE NUMBER</b> 124
<b>MAILING ADDRESS</b> Burnt Valley Ranch Paul D. Bennett 2955 Burnt Valley Road Chewelah WA 99109	<b>SITE ADDRESS (IF DIFFERENT)</b>

**Total Quantity Authorized for Withdrawal or Diversion**

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
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**Purpose**

PURPOSE	DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Irrigation	---					---

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
5			

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
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SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
UNNAMED SWAMP			33 N.	41 E.	21	SW¼SE¼		
CHEWELAH CREEK			33 N.	41 E.	21	SW¼SE¼		

**Place of Use (See Attached Map)**

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

### Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. It has been determined that Surface Water Certificate No. 124 is **RELINQUISHED**.

Therefore, I ORDER that the change to Surface Water Certificate No. 124 be **DENIED**.

### Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this       day of       2011.

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Keith L. Stoffel  
Section Manager  
Water Resources Program

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

## DRAFT

### INVESTIGATOR'S REPORT

WASHINGTON STATE - DEPARTMENT OF ECOLOGY  
Water Resources Program - Eastern Regional Office  
Water Right Control Number CS3-\*01530C  
Surface Water Certificate No. 124

### BACKGROUND

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An application for change/transfer was submitted by Paul D. Bennett (Burnt Valley Ranch) of Chewelah, Washington to the Department of Ecology on June 11, 2010. Mr. Bennett proposes to change the point of diversion as granted under Surface Water Certificate No. 124.

#### Attributes of the Existing Water Right and Proposed Change

Change Application Filed: June 11, 2010

Attributes	Existing Water Right	Proposed Changes
Number	Surface Water Certificate No. 124	---
Name	Joseph A. Schnyder	Burnt Valley Ranch
Priority Date	June 29, 1926	---
Instantaneous Quantity	0.10	---
Annual Quantity	Not given	---
Purpose of Use	Irrigation of 5 acres	---
Period of Use	Seasonal	---
Point(s) of Diversion	Unnamed Swamp SW¼SE¼ of Sec. 21	Chewelah Creek (South Fork) SW¼SE¼ of Sec. 21
Place of Use	SW¼SE¼ of Sec. 21	---

#### Proposed Sources of Diversion

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Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
CHEWELAH CREEK			33 N.	41 E.	21	SW¼SE¼		

## Public Notice

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RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in The Chewelah Independent during the weeks of September 1 and 8, 2011.

## State Environmental Policy Act (SEPA)

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A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

## INVESTIGATION

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There are five water rights recorded on the Burnt Valley Ranch property: Chewelah Creek Adjudicated Surface Water Certificate Nos. 31, 72, 73, 75 and Surface Water Certificate No. 124.

Adjudicated Certificate Nos. 72 and 75 were both issued to J. A. Mitchell on January 10, 1933. Adjudicated Certificate Nos. 31 and 73 were issued to Joseph A. Schnyder on January 10, 1933. These four certificates were all issued based on a Decree of the Superior Court of Stevens County, Washington, issued on October 15, 1932 and recorded in Volume 28, Page 308. This Decree determined the rights to all known claimants of the waters of Chewelah Creek, a tributary to the Colville River. The certificates were issued for lands now being irrigated by Mr. Bennett (Burnt Valley Ranch).

Adjudicated Certificate No. 31 authorized diversion from the South Fork of Chewelah Creek in the amount of 0.01 cubic foot per second for continuous stock and domestic use. The recorded point of diversion of this right is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 21, T. 33 N., R. 41 E.W.M. The recorded place of use is the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 21, T. 33 N., R. 41 E.W.M.



Adjudicated Certificate No. 72 authorized diversion from the South Fork of Chewelah Creek at two points in the amount of 1.00 cubic foot per second for the irrigation of 60 acres of land from April 15 to September 15. The recorded points of diversion of this right is within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 22, T. 33 N., R. 41 E.W.M. The recorded place of use is the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 21; NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 27 and N $\frac{1}{2}$ NE $\frac{1}{4}$  of Sec. 28, ALL IN T. 33 N., R. 41 E.W.M.

Adjudicated Certificate No. 73 authorized diversion from the South Fork of Chewelah Creek in the amount of 0.033 cubic foot per second for the irrigation of 20 acres from April 15 to September 15. An additional 0.033 cfs was authorized for transportation losses. The recorded point of diversion of this right is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 21, T. 33 N., R. 41 E.W.M. The recorded place of use is the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 21, T. 33 N., R. 41 E.W.M.

Adjudicated Certificate No. 75 authorized diversion from Six Mile Creek and the South Fork of Chewelah Creek in the amount of 0.50 cubic foot per second for the irrigation of 30 acres from April 15 to September 15. The recorded points of diversion of this right are: 1) Six Mile Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 27, T. 33 N., R. 41 E.W.M. and 2) South Fork Chewelah Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 22, T. 33 N., R. 41 E.W.M. The recorded place of use is the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 21; NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 27; N $\frac{1}{2}$ NE $\frac{1}{4}$  of Sec. 28, T. 33 N., R. 41 E.W.M.

Adjudicated Certificate Nos. 72, 73 and 75 each contained the following provision regarding the irrigation season: *"With unusual weather conditions, lands may be irrigated at any time when the water can be beneficially used, provided such use does not interfere with prior rights."*

Surface Water Certificate No. 124 was issued to Joseph A. Schnyder prior to the Chewelah Creek Adjudication on June 29, 1926. This right authorized diversion from an unnamed swamp in the amount of 0.10 cubic foot per second for domestic supply and irrigation of 5 acres. The point of diversion and place of use of this right is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 21, T. 33 N., R. 41 E.W.M.

Mr. Bennett purchased the Burnt Valley Ranch property in 1978. When purchased, the point of diversion used for irrigation was the current day location from the South Fork Chewelah Creek within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Sec. 21, T. 33 N., R. 41 E.W.M. No water is diverted from Six Mile Creek or the Unnamed Swamp. The diversion pump is located near the old dairy barn south of Burnt Valley Road and north of the creek. Mr. Bennett thinks that this has been the diversion for the ranch since the 1940's or 50's but there are no records. A 25 horsepower centrifugal pump (300 gallons per minute) is used to divert water at this location. The diversion is currently not metered however, the Chewelah Creek Adjudication Decree dated October 15, 1932 ordered: *"That any person taking water from Chewelah Creek or its tributaries shall provide and maintain at his own expense proper diversion works and measuring devices as are required by law."* Therefore, a measuring device will need to be installed.

Three wheel lines (28 sprinklers per line) are used to irrigate a total of 70 acres of hay. Only two of the wheel lines can be run at a time. Two lines are use to irrigate 50 acres north of Burnt Valley Road within the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 21. Another line is used to irrigate 20 acres south of the creek and Burnt Valley Road within the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 28.

Mr. Bennett is proposing to correct the "paper" record by changing the point of diversion on Certificate Nos. 72 and 75 to the historical and current point. He has farmed the land and diverted from this location since he purchased the property with no periods of non-use. Mr. Bennett irrigates no more than 70 acres of land. A combined 50 acres is irrigated under Adjudicated Certificate No. 72 and 73 and

20 acres is irrigated under Adjudicated Certificate No. 75. In addition to the adjudicated certificates, Mr. Bennett filed for a change to Surface Water Certificate No. 124. This right is not used and after discussion with Mr. Bennett it has been determined to be relinquished. A voluntary relinquishment form will be sent to Mr. Bennett for signature.

The map below shows the irrigated areas under each water right and the current point of diversion:



2009 Aerial Photo



### Other Rights Appurtenant to the Place of Use

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These are the recorded water rights on the Burnt Valley Ranch property and the proposed changes:

#### **Chewelah Creek Adjudicated Certificate No. 31**

Recorded Name: Joseph A. Schnyder  
Priority Date: Not given (Class 1)  
Instantaneous Quantity - Qi: 0.01 cubic foot per second  
Purpose of Use: Stock & domestic  
Period of Use: Continuous  
Source: Chewelah Creek (South Fork)  
**Proposed change: No change requested**

#### **Chewelah Creek Adjudicated Certificate No. 72**

Recorded Name: J. A. Mitchell  
Priority Date: 1893 (Class 8)  
Instantaneous Quantity - Qi: 1 cubic foot per second  
Purpose of Use: Irrigation of 60 acres  
Period of Use: April 15 – September 15  
Source: Chewelah Creek (South Fork)  
**Proposed change: Change POD, POU**

#### **Chewelah Creek Adjudicated Certificate No. 73**

Recorded Name: Joseph A. Schnyder  
Priority Date: 1893 (Class 8)  
Instantaneous Quantity - Qi: 0.033 cubic foot per second  
Purpose of Use: Irrigation of 20 acres  
Period of Use: April 15 – September 15  
Source: Chewelah Creek (South Fork)  
**Proposed change: No change requested**

#### **Chewelah Creek Adjudicated Certificate No. 75**

Recorded Name: J. A. Mitchell  
Priority Date: 1894 (Class 9)  
Instantaneous Quantity - Qi: 0.50 cubic foot per second  
Purpose of Use: Irrigation of 30 acres  
Period of Use: April 15 – September 15  
Source: Six Mile Creek & Chewelah Creek (South Fork)  
**Proposed change: Change POD**

#### **Surface Water Certificate No. 124**

Recorded Name: J. A. Mitchell  
Priority Date: October 26, 1925  
Instantaneous Quantity - Qi: 0.1 cubic foot per second  
Purpose of Use: Domestic and Irrigation of 5 acres  
Source: Unnamed Swamp  
**Proposed change: Change POD**  
**NOTE: RELINQUISHED – Not recognized in Adjudication**

### Impairment Considerations

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“Impair” or “impairment” means to: 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200), and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The proposed point of diversion is located downstream from the diversion authorized under the original certificate. No other diversions or significant changes occur in the South Fork Chewelah Creek between the originally authorized point of diversion and the proposed point of diversion. The current diversion has been in use for well over 50 years with no complaints of impairment. No water is authorized to be diverted above what has been historically used, and it is not anticipated that the proposed change/transfer would cause impairment to existing water rights.

### Enhancement Considerations

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The proposed change will not increase the amount of water diverted from the South Fork Chewelah Creek, nor will it increase or expand the right. No diversion of water over and above what has been historically authorized would be approved through this change. Mr. Bennett has historically irrigated the 70 acres under the three (3) adjudicated certificates (Portions of #72, #73 and #75) with no period of non-use. No annual quantity was assigned to these water rights so an estimate was calculated using the Washington State Irrigation Guide (WA210-Vi-WAIG, AMEND.1NOVEMBER1990 at Chewelah, Washington). Mr. Bennett uses wheel lines to irrigate alfalfa/hay. Assuming 70% system efficiency, this would calculate to 34.2 inches or 2.85 acre-feet per acre of irrigation. Therefore, a total of 200 acre-feet (70 acres x 2.85 acre-feet per acre) for the seasonal irrigation of 70 acres will be assigned to Burnt Valley Ranch as the total annual quantity under these three (3) water rights.

A proportionate share is calculated for the Qi and Qa under the rights proposed for change (Certificates #72 and #75). No changes are necessary to Certificate #73:

For irrigation of the 70 acres, a proportionate share is calculated for the Qi and Qa under the rights proposed for change (Certificates #72 and #75). No changes are necessary to Certificate #73:



**BURNT VALLEY RANCH – IRRIGATION RIGHTS AFTER CHANGES**

<b>CERTIFICATE</b>	<b>PRIORITY</b>	<b>Qi (cfs)</b>	<b>Qa (af/yr)</b>	<b>ACRES</b>	<b>SEASON</b>
<b>#72</b>	1893	0.50	86	30	April 15- Sept 15*
<b>#73</b>	1893	0.333	57	20	April 15- Sept 15*
<b>#75</b>	1894	0.33	57	20	April 15- Sept 15*
<b>TOTAL</b>	---	<b>1.63</b>	<b>200</b>	<b>70</b>	April 15- Sept 15*

**Note:** Certificate No. 73 allowed an additional 0.033 cfs for transportation loss

\*With unusual weather conditions, lands may be irrigated at any time when the water can be beneficially used, provided such use does not interfere with prior rights

Because the entire 70 acres is not irrigated at one time, each individual certificate listed above will maintain its own separate instantaneous quantity (Qi) to satisfy each water right certificate's number of acres and annual quantity.

### Consideration of Protests and Comments

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No protests were filed against this application.

### Conclusions

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It is the conclusion of this examiner that Surface Water Certificate No. 124 and the diversion from an unnamed swamp located within the SW¼SE¼ of Sec. 21 has not been used for well over five consecutive years without sufficient cause for non-use in accordance with RCW 90.14.140. Therefore, Surface Water Certificate No. 124 has **RELINQUISHED** back to the State of Washington.

### RECOMMENDATIONS

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Based on the above investigation and conclusions, I recommend that the request for change under Surface Water Certificate No. 124 be **DENIED**.

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Gene Drury, Report Writer

Date

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